

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

WP(C).No. 20360 of 2004(S)

OA.398/2003 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

PETITIONERS: PETITIONERS.

1. THE UNION OF INDIA, REP. BY THE
GENERAL MANAGER, SOUTHERN RAILWAY, HEAD QUARTERS
OFFICE, PARK TOWN P.O. CHENNAI - 3.
2. THE DIVISIONAL RAILWAY MANAGER,
SOUTHERN RAILWAY, PALAKKAD DIVISION,
PALAKKAD.
3. THE DIVISIONAL PERSONNEL OFFICER,
SOUTHERN RAILWAY, TRIVANDRUM DIVISION,
TRIVANDRUM.
4. THE CHIEF PERSONNEL OFFICER,
SOUTHERN RAILWAY, HEAD QUARTERS OFFICE,
PARK TOWN P.O. CHENNAI- 3.

BY ADV. SRI.V.SANTHARAM, SC. RAILWAYS
SRI.ALEXANDER THOMAS, SC,RAILWAYS

RESPONDENTS:

1. JIPSON RAJ GEORGE, S/O.GEORGE,
DIESEL ASSISTANT, SOUTHERN RAILWAY, PALAKKAD
DIVISION, ARAKKAL HOUSE, MOOLAMATTOM P.O.
IDUKKI DISTRICT.
2. V.P.RAJESH, S/O.VASUDEVAN, DIESEL ASSISTANT,
SOUTHERN RAILWAY, PALAKKAD DIVISION,
R/A. PADMAVILASOM, AVANAVANCHERRY P.O. ATTINGAL,
TRIVANDRUM DISTRICT.

3. K.K.SURESH KUMAR, S/O.KRISHNAN,
DIESEL ASSISTANT, SOUTHERN RAILWAY, PALAKKAD
DIVISION, R/A.KANDALIPLAKKAL HOUSE, KARIPPALANGADU
P.O.M KULAMAVU VIA, IDUKKI DISTRICT.
4. K.S.BAIJU, S/O.P.KAMALSANAN, DIESEL
ASSISTANT, SOUTHERN RAILWAY, PALAKKAD DIVISION,
R/A. AT REVATHY NEAR HIGH SCHOOL, CHERUNNIYOOR PO,
VARKALA, TRIVANDRUM DISTRICT.
5. K.C.BIJU, S/O.CHATHAN, DIESEL ASSISTANT,
SOUTHERN RAILWAY, PALAKKAD DIVISION, R/A.
C/O.N.P.SUDHAKARAN, NIKATHUTHARA HOUSE,
PUTHYVYPE.P.O. ERNAKULAM.
6. SAJEEVLAL O.SANKAR, S/O.SANKARAN,
DIESEL ASSISTANT, SOUTHERN RAILWAY, PALAKKAD
DIVISION, R/A. OZHAKKANATT HOUSE, VALUVALLY P.O.
KONNAMMAVU,ERNAKULAM.
7. K.K.SURESH, S/O.KAMALASANAN K.D.
DIESEL ASSISTANT, SOUTHERN RAILWAY,
PALAKKAD DIVISION, R/A. KANDAZHATHU KALATHIL,
ANDIKKADAVU P.O. PUTHEN THODE, KOCHI DISTRICT.

BY ADV. SRI.T.C.GOVINDA SWAMY - R1 TO R7
SMT.D.HEERA
SRI.K.M.ANTHRU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C) NO: 20360/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER NO. P(S) 676/VI/O.A/23/CAT/ERS DT. 8/4/03 BY THE P4.

EXT.P2. COPY OF THE O. ANO. 398/03 DT. 14/5/03 WITHOUT ANNEXURES.

EXT.P3. COPY OF THE OFFICE ORDER NO. 56/00 DT. 29/5/00 BY SR. PERSONAL OFFICER, CHENNAI.

EXT.P4. COPY OF THE OFFICE ORDER NO. 56/00 DT. 29/5/00 BY SR. PERSONAL OFFICER, CHENNAI.

EXT.P5. COPY OF THE ORDER DT. 13/09/02 O.O. NO. 23/02/RG(M) BY SR. DIVISIONAL PERSONAL OFFICER, TRIVANDRUM.

EXT.P6. COPY OF THE ORDER O.O. NO. 26/02/R.G.(M) BY SR. DIVISIONAL MECHANICAL ENGINEER, TRIVANDRUM DT. 20/09/02.

EXT.P7. COPY OF THE REPRESENTATION BY RESPONDENTS BEFORE THE P4 DT. 20/2/2003.

EXT.P8. COPY OF THE ORDER BY THE PETITIONERS TO THE RESPONDENTS DT. 30/4/97.

EXT.P9. COPY OF THE ORDER BY THE TRIBUNAL IN OA NO. 741/99 DT. 28/3/00.

EXT.P10. COPY OF THE REPLY BY THE PETITIONERS BEFORE THE TRIBUNAL IN OA NO. 398/03 DT. 31/10/03.

EXT.P11. COPY OF THE REJOINDER FILED BY THE RESPONDENTS TO THE COUNTER DT. 15/11/2003.

EXT.P12. COPY OF THE REPLY BY THE PETITIONERS TO THE REJOINDER DT. 8/1/04.

EXT.P13. COPY OF THE ORDER DT. 9/1/2004 IN OA NO. 398/03 BY THE TRIBUNAL.

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RESPONDENT'S EXHIBITS

EXT.R5A. COPY OF THE RAILWAY BOARD ORDER BEARING NO. ESTT. SL. NO. 29/71 DT. 25/1/71.

EXT.R5B. COPY OF THE RAILWAY BOARD ORDER BEARING NO. E (NG) 1171/TR/1 DT. 31/3/71.

EXT.R5C. COPY OF THE PERSONNEL BRANCH CIRCULAR NO. 164/85 BY THE GENERAL MANAGER SOUTHERN RAILWAY.

EXT.R5D. COPY OF THE INTERIM ORDER DTD. 15/5/03 PASSED IN OA NO. 398/03.

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K.BALAKRISHNAN NAIR &
T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) NO. 20360 OF 2004-S

Dated 20th September, 2007.

JUDGMENT

Balakrishnan Nair, J.

The respondents in O.A.No.398/2003 before the Central Administrative Tribunal, Ernakulam Bench are the writ petitioners. The applicants in the said O.A are the respondents.

2. All the respondents belonged to SC/ST category. They were Diesel Assistants working in Palakkad Division. They were desirous of getting a transfer to Trivandrum Division. They applied for inter-division transfer and their names were also registered along with others. The seniority of the registrants was fixed with reference to the date of registration. While so, certain vacancies exclusively reserved for SC/ST candidates arose in Trivandrum Division and they were going to be filled up by direct recruitment of SC/ST candidates. The respondents herein represented that they may be accommodated in those vacancies. The Central Administrative Tribunal directed consideration of their application. That application was

considered and rejected by Ext.P1 order. The applicants challenged that order before the Central Administrative Tribunal by filing O.A.No.398/2003. Ext.P1 order was passed mainly on two grounds. The first ground was that the transfer of the applicants/respondents herein to Trivandrum in the SC/ST quota will amount to out of turn transfer, affecting the seniors among the registrants, who belonged to the general category. The second ground was that it will affect the operational and administrative requirements of the Railways. The applicants claimed reliefs against Ext.P1, mainly relying on Ext.P8 order of the Chief Personnel Officer of the Railways, granting inter-division transfer to similarly placed candidates in 1997. The general candidates challenged that decision before the Central Administrative Tribunal. The said challenge was repelled by Ext.P9 order.

3. The petitioners herein resisted the present O.A., contending that the Rules permit inter-division transfer strictly on the basis of seniority of the application for the same. So, the applicants are not eligible for out of turn transfer. The Tribunal considered the rival contentions and allowed the O.A filed by the respondents herein by Ext.P13 order dated 9.1.2004. The Tribunal held that if the applicants are sent to the SC/ST vacancies in Trivandrum Division, which are going to be filled up by direct recruitment, no one will be affected. It was also held that since equal number of

candidates join there, the administrative exigencies or operational requirements are not affected.

4. The petitioners challenge the said judgment, mainly contending that it runs counter to the statutory Rules governing inter-division transfer. As per the Rules, only seniority of registration is the relevant criteria for inter-division transfer. It is pointed out that while exercising the power of judicial review, the Tribunal should not have asked the Railways to go against the Rules.

5. In answer, the learned counsel for the respondents herein pointed out that it was always the policy of the Railways to effect inter-division transfers before going for direct recruitment to fill up the vacancies in a particular division. The said principle was made applicable in the case of special recruitment also, by Ext.P8. So, there is no reason why the said principle cannot be extended in the case of the applicants, the respondents herein also.

6. We notice that the persons involved in this case are only 7 in number. It is not in dispute that they are seniors among the SC/ST registrants in Palakkad Division. We also notice that the relevant Rules of the Railways permit inter-division transfer only based on the seniority of registration. But, the same was diluted while issuing Ext.P8. The said

order was upheld by the Central Administrative Tribunal also. Similar concession was extended in the case of SC/ST candidates in this case by the Tribunal, relying on those orders. We notice that by transferring the respondents herein to SC/ST vacancies, no one is practically affected, except the direct recruits to the SC/ST quota, who are going to be posted at Trivandrum. The general registrants in Palakkad Division, who are seniors, cannot be transferred and posted in the vacancies set apart for SC/ST in Trivandrum Division, to which the respondents herein are transferred. Some of the general candidates, who are juniors to the respondents herein will be benefitted also by the transfer of the SC/ST candidates. The general candidate will get his turn as and when the same arises and he can get seniority with effect from the date he joins Trivandrum. The said date will not be postponed as a result of posting the respondents herein to the SC/ST vacancies. If the respondents do not go there, the direct recruits will occupy those posts. The registrants can ask for only the vacancies other than those reserved for SC/ST. Therefore, there is no out of turn transfer in the strict sense, affecting the general registrants. They will get their turn as and when the same arises. So, without affecting the general candidates a concession has been extended to the members of SC/ST community by the Central Administrative Tribunal. Therefore, we feel that in exercise of the

discretionary jurisdiction under Article 226/227 of the Constitution of India, we need not interfere with the same. As noticed by us earlier, the deviation made in Ext.P8 may be against the general rules applicable. Therefore, regarding the legality of the direction issued in Ext.P13, the contentions of the Railways are kept open. If, in a future case the Railways have to take up that contention, this judgment will not affect their rights to do that. Having regard to the special facts of the case and the limited number of persons involved and lack of prejudice to the senior registrants, we decline to interfere with Ext.P13. But, it is clarified that this judgment will not affect the claims of any direct recruits from SC/ST regarding their posting to Trivandrum.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/